

State TERMINATION OF CONTRACT; REPUDIATION

If the purchaser fails or refuses to carry out terms of a timber sale contract, the forester responsible for administration of the sale should proceed as follows:

1. a. Contractor Contact. In the event a forester becomes concerned whether the purchaser can or intends to perform, e.g., not enough time left, the forester should make contact with the contractor. Discuss the contract violations. Explain the claims that will be made by the Department including retention of the performance bond for damages (see number 4 below for cost determination).
- b. Coordination. Demand in writing adequate assurance of contract performance stating the reasons for concern. Until the Department receives such assurance, it may suspend harvesting and hauling operations. A reasonable time for response, up to 30 days, must be given for a response. If the reasonable time after receipt of the justified demand passes without such assurance provided, it will be considered a "repudiation" of the contract. After repudiation, the contractor may retract it by proper action if accomplished before the Department acts on the breach, i.e., resale (ss. 402.609 to 402.611, Wis. Stats.).

When termination of a contract is being considered, the Chief of the Forestry Lands Section, Bureau of Forestry, should be notified as soon as possible.

2. If the recommendation is to terminate the contract:
 - a. Obtain written approval from the regional forestry expert in counsel with the Bureau of Legal Services to terminate the sale. Request should be accompanied by copies of written records such as unsatisfactory performance notification of contract violations, or written statements by contractor that he does not choose to complete the contract.
 - b. Notify contractor, preferably by certified mail, with a return receipt requested, indicating the specific contract provisions that were violated and outlining the claims for damages that will be made including use of the performance bond. Five days written notice is suggested. Make demand on assurity bond if contractor fails to pay damages. Send copy to Forest Tax Section for filing.
3. Re-sell remaining timber if salable. Should give notice of time and place to the contractor. If the sale is resold for less than the original amount, administrative costs plus the difference should be retained from the performance bond. If the sale is resold for more than the original amount, administrative costs only should be retained.
4. Close-out the sale with a Timber Sale Close-out Transaction, Form 2460-4. On an attached sheet, itemize cost to reestablish timber sale (costs may normally include the hours required to cruise and re-establish the new sale multiplied by the hourly rates and the costs of re-advertising), reduced value of the remaining timber (if resold) and value of remaining timber if unsalable. The Department should determine if the contract was adequately performed within 60 days from notice of completion or the termination date. If the contract was not adequately performed, damages must be determined before any money is to be refunded.
 - a. If performance bond was in cash, subtract damages from performance bond and request refund of balance if performance bond exceeded damages.
 - b. If performance bond is used, bill the assurance agent for the amount of damages. Provide copies of material that substantiate the damages claimed.
 - c. If damages are more than the amount of the performance bond, refer to Bureau of Legal Services.
5. Although the contract provides for liquidated damages (flat fee), the Department will routinely pursue actual damages as provided in 4 above if they can be easily determined.

EXAMPLE

(Send Certified)

Mr. John Smith
100 West Land
Brooksville, Wisconsin 10010

RE: Notification of Breach of Contract Number 1034

Dear Mr. Smith:

The Department of Natural Resources has determined that you have violated Condition 6 of Contract Number 1034 entered into on August 3, 2001 and, therefore, have breached the contract. The contract is hereby terminated in accordance with Condition 4 of that contract.

On two separate occasions Department staff observed you and your agents removing forest products from state property without paying or filing proper guarantees for payment with the Department. On March 1, 20__, you were observed removing two truckloads in violation of Condition 6 of the contract, and on March 13, 20__ you were observed removing one truckload from state property also in violation of that Condition. In each instance, you were notified in writing and verbally at the time of the violation.

In accordance with Condition 5 of the contract, your performance bond will be retained to apply to damages incurred in reletting the contract (or your performance bond will be retained by the Department for damages sustained as a result of the breach). You are liable for damages incurred in excess of your performance bond.

The timber sale and products available for cutting thereunder will be sold at public sale through the bidding process (or through a private sale).

OPTIONAL ADDITIONAL LANGUAGE (IF APPLICABLE)

In addition, you will be considered an irresponsible bidder for the period of two years from the date of this notice (note to author: may be less). The Department will not consider your bid responsible or acceptable for consideration during this period, unless you have demonstrated to the Department's satisfaction that you are responsible.

Sincerely,

cc: Bureau of Legal Services
Bureau of Finance
Regional Forestry Expert